



The MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee convened in a Regular meeting on Tuesday, February 2, 2021 via videoconference.

CALL TO ORDER

Committee Chair, Eliza May calls meeting to order at 5:32pm.

BOARD MEMBERS IN ATTENDANCE:

Eliza May (Chair), Reginald World (Vice-Chair), Lena Banks, Daniel Berner, Usha Boddapu, Barbra Boeta, Tina Cannon, Schiller Liao, Ahmed Moledina

CITIZEN COMMUNICATION: GENERAL

There were no speakers.

1. APPROVAL OF MINUTES

The minutes for the regular meeting of February 2, 2020 were considered for approval. The minutes were approved on a motion by Committee Member, Schiller Liao and seconded by Committee Member, Ahmed Moledina. Minutes approved on an 8-0 vote.

2. NEW BUSINESS

For discussion and possible action on recommendations to City Council (City Code § 2-1-163(B)) regarding the following:

- a. Discussion and appropriate action regarding information on the City's MBE/WBE participation and usage; and the use of a Personal Net Worth (PNW) and the Economic Disadvantage definition in the MBE/WBE Procurement Program.
 - Frank Fuentes and Salvador Chavarria of the US Hispanic Contractors Association (USHCA) and Greater Austin Hispanic Chamber of Commerce both presented on this item.
 - One of their key goals is to increase minority participation of their members. Have been working on this goal for about two years. They represent over 1800 businesses in Austin ranging from construction firms, IT firms, professional firms, and commodity firms.
 - Reviewed Austin's certification process compared to the other four municipalities. Austin is the only city that does not accept certificates from other regional organizations. Many of our members have their regional MBEs and state HUBs but no COA MBE.

- Austin imposes a personal net worth (PNW) limit for any owners of any business that have MBE/WBE certification.
- The payment process on contracts, lack of reciprocity with certification, and firm size limits have considerably decreased the pool of MBE/WBE firms.
- Our recommendations are as follows:
 - Eliminate Personal Net Worth cap and support immediate State HUB reciprocity for City projects while firms recertify. Expand pool of MBE/WBE firms prior to the new Disparity Study, then revise the program once the Disparity Study is completed.
 - Request City Council to drive accountability to increase MBE/WBE/SBE participation as part of the COVID-19 economic recovery plan. Create quarterly reports and present to City Council on MBE WBE/DBE participation. Appoint someone at SMBR to identify DBE Federal projects and recruit DBE firms that would meet project requirements and incorporate MBE/ WBE/DBE requirements into any large City of Austin project (e.g. Project Connect).
 - The City should revisit prompt payment performance on City projects to encourage MBE/WBE/DBE to compete and prosper. Create reports that show how quickly firms are being paid. Streamline payment processes to drive improvement and payments to disadvantages business over time.
- Once the pool of MBE/WBE/DBEs firms have expanded, more realistic goals can be set on City projects that reflect the diversity in Austin.

Discussion:

Committee Member, Tina Cannon asks if any City of Austin staff seen this data that was pulled and has any staff had the opportunity to comment on the data?

Salvador Chavarria of USHCA responds that the data was reviewed with Ronnie Gonzalez (Assistance City Manager, Management Services) and Edward Campos (SMBR Interim Director). Ronnie and Edward did not have any negative comments on the data. They did mention that this program was designed to be a small business program.

Committee Member, Daniel Berner asks if the 6% total spend includes minority owned companies that are not certified as MBE/WBEs because they are larger companies?

Salvador Chavarria of USHCA responds that the total spend increases to 25% for 2019 when it includes minority owned firms for the larger companies (including state HUB). Even at 25% the number falls way below the goal set for minority companies.

- Three registered speakers that support the efforts of the USHCA’s advocacy for the MBEs/WBEs in Austin.
 - Diana Maldonado is the President/CEO of the Greater Austin Hispanic Chamber of Commerce (GAHCC). One of their initiatives as a Chamber is to make sure that we have policies and legislation that help small businesses and entrepreneurs.

- Paul Saldaña is the President/Principal of Saldaña Public Relations. He is also the Co-Founder of Hispanic Advocates Business Leaders of Austin (HABLA).
- Enrique Gonzalez is the Vice President of Construction for JE Dunn Construction. His firm is very experienced and well-versed with the City and working with the different businesses. His firm struggles to find the pool of good MBE/WBE candidates.

Discussion:

Committee Vice-Chair, Reginald Worlds asks Salvador Chavarria if the USHCA has presented this information to the Austin Black Contractor's Association (ABCA) and if so, was a response provided?

Salvador Chavarria responds that it was given to the Black Contractors Association and do not support the recommendations because they view the program as a small business program.

Committee Vice-Chair, Reginald Worlds asks Interim SMBR Director, Edward Campos if Carol Hadnot of the Austin Black Contractor's Association has seen the information from USHCA? Edward Campos responds that he has not heard from her regarding this presentation.

Committee Vice-Chair, Reginald Worlds asks Edward Campos to contact ABCA regarding Ms. Hadnot's position on this matter. Edward Campos responds that he will contact her.

Committee Member Daniel Berner proposes in terms of the next steps on the recommendations from the USHCA as follows:

- Speed of payment
This topic is out of the control of this Advisory Committee may not need further discussion.
- Accepting certifications form other entities
Has several questions on this topic. 1) Why can't we accept certifications from other entities? 2) What do we require in our certification that other entities do not? 3) Are those requirements important or can they be eliminated?
- Personal Net Worth (PNW)
This is a significant policy discussion. Do we want to all of a sudden increase the percentage result we have because we decided to count larger companies with more assets, considering them to MBEs/WBEs. Would that be to the detriment of smaller companies?

SMBR Interim Director, Edward Campos stated that reciprocity with other agencies is considered. Our program has two significant items as part of the certification process: The first is the personal net worth requirement. The second is we also conduct site audits. If we were to find an agency that included those same requirements, we could consider having a reciprocity agreement. As of now, we have not found an entity outside of the City that meets those requirements outside of the Federal DBE program, and we run our own federal DBE program on behalf of the City of Austin.

Salvador Chavarria asks why does the City rely on a 3rd party entity to do site visits when the other larger cities that have much higher participations do not rely on a 3rd party to do their site visits?

SMBR Interim Director, Edward Campos responded that the City has structured a narrowly tailored program. The courts have mandated in order to maintain a local MBE/WBE program that is structured to remedy past discriminations, the program must maintain strict scrutiny. The program is based upon identifying the socially disadvantaged (African American, Hispanic, Asian, Native American, and Women). The program is also based upon identifying the economically disadvantaged which is the reason for the personal net worth (PNW) requirement. Since 2006 PNW requirements were adopted, it may be time for a new discussion.

Frank Fuentes and Salvador Chavarria both request that the PNW requirements be reviewed because the low 6% minority participation shows that there is a lot of room for improvement.

Committee Member Barbra Boeta asks regarding the presentation that if the goal is 41% for minority, women, and MBE/WBE's, but when you add that number together, did you remove the number of women that are also certified as MBE?

SMBR Interim Director, Edward Campos responds the reports that are currently out there with the City, talk about overall spend and the MBE/WBE program is not applied across the board. It is applied very narrowly. The total spend versus where we have an impact are two different things, so the goals are going to be very different.

Frank Fuentes adds that the report is specific to the participation goals for contracting not for items such as labor or payroll.

Committee Member Barbra Boeta asks if the City accepts other entity certifications, how is that going to affect our local small businesses?

Frank Fuentes responds that with the current program 6% overall spent, it is not working. In Austin, most of our members are HUB certified but not MBE/WBE certified because of those restrictions.

Committee Member Barbra Boeta asks Edward Campos how does the City determine the PNW limits and when was the last time it increased?

SMBR Interim Director, Edward Campos responds that we use the US Labor Index for the Southwest and it is updated every year. The last update was in January, so it is now set at \$1.53 million.

Committee Member Barbra Boeta asks how are the trade associations helping these up and coming businesses obtain contracts?

Frank Fuentes responds that we used a Plan Room prior to the pandemic where we could download blueprints for them and answer questions. We assist with permitting and mitigating issues with inspectors and payment issues. We provide OSHA training for free in both English and Spanish. During the pandemic we free COVID-19 testing, masks, sanitizer, translated safety protocols for COVID-19 into Spanish. We advocate at the City, County, State, and National levels.

Committee Member, Usha Boddapu asks why are the payments to the contractors delayed? We are providing opportunities to MBE/WBEs based on the socio/economic factor. It is difficult for these businesses to pay their employees payroll and funding is always a problem when their payments are delayed. This issued needs to be resolved.

Also, can we consider suspending PNW (at least for a certain number of years) because we are in a pandemic and a lot of MBE/WBEs businesses are impacted.

SMBR Interim Director, Edward Campos responds that we can go back and look at the payment process. Also, suspending the PNW temporarily would have to be decided by Council (that means suspended a portion of the ordinance).

SMBR Interim Director, Edward Campos adds that this and other topics of discussion are taking place this summer in anticipation of new recommendations out of the disparity study. Our Disparity Study consultant is reviewing what other entities around the country are doing in terms of a personal network threshold, what other sorts of index we can use if not the current index. It makes sense to have the inclusive procurement working group to take the reins on this topic, and we will keep the Advisory Committee informed during monthly updates.

Committee Vice-Chair Reginald Worlds and Committee Member, Schiller Liao agree that there is not enough information to move forward or not. Request that the discussion of personal net worth be continued at the next meeting.

Committee Member, Daniel Berner asks Edward Campos how much of what Sal and Frank are proposing for the PNW can we assume without harming that 6% level?

SMBR Interim Director, Edward Campos responds that the total spend does not represent where SMBR actually applies the program. We don't apply the program to that total spend we apply the program to a very narrow amount of that spend. We continue to work with the Purchasing Office on creative ways we can do for the balance of the spend that is competitive in nature and in which SMBR apply the program because it's too small, (the City does small purchases under \$50,000). We are working together to try to see what else can be done to advocate for those small minority and women owned businesses to partake in that piece.

Committee Chair, Eliza May requests that Edward Campos take the presentation and develop a response to it. Requests that Committee Vice-Chair, Reginald Worlds could discuss the presentation with the Black Contractors Association.

Committee Member, Barbra Boeta adds that she is not ready to move on this topic. There is a new Disparity study coming out and she does not want to work on correcting something and then in the summer redo it over due to the results of the study.

Committee Chair, Eliza May would like to keep the dialogue going by placing this item on the agenda. Wants the Committee to get a clear understanding of what the City can and can't do regarding the Personal Net Worth.

Committee Vice-Chair, Reginald Worlds agrees with Committee Chair, Eliza May. Would like to keep the discussion going but take ample time to gather the data from all parties involved and get a clear understanding of all the ramifications.

Committee Member, Tina Cannon requested that the City produce the data of the small business and minority procurement. She asks if there is a difference in the data, if so, she would like to see it prior to the next meeting.

b. Discussion and appropriate action regarding the prospect of a resolution supporting the inclusion of Lesbian, Gay, Bisexual and Transgender-Owned Businesses in the City's procurement process.

- Committee Member, Tina Cannon initiates the discussion.
 - Requests that the Committee become familiar with the LGBT business enterprise and then have a discussion about the rationale for inclusion of certified LGBTBEs in our City's procurement process, then work together to present the Resolution to Council in the upcoming weeks/months.
 - LGBTBE is same as any other MBE/WBE. The National Gay and Lesbian Chamber of Commerce (NGCC) is the only body that certifies on the national level and conducts their analysis based on the same principles and guidelines used by the US State Department of Transportation Disadvantaged Business Enterprise program.
 - She asks the Committee what this would mean to businesses in the Austin area.

Discussion:

Committee Member, Daniel Berner asks has there been any case in terms of the legal basis for the inclusion of LGBTBEs in these types of programs? Has this been challenged before? Is this an issue that has been presented before the courts? Can this potentially jeopardize the program as a whole?

Committee Member, Tina Cannon responds that it is nearly impossible to have procurement opportunities as an LGBTBE. Larger cities in the country have adopted procurement policies for LGBTBEs. There are over 200 companies that have internal LGBTBE programs set on the private sector. It may be new to the conversation here, but it is not new to the LGBT business community.

Committee Chair, Eliza May and Committee Member, Tina Cannon both ask if the LGBTBE can be included in the MBE/WBE program?

SMBR Interim Director, Edward Campos responds that the City Council can create and draft policies in any manner they see fit. The current MBE/WBE program is tailored to remedy past discrimination for those presumed socially and economically disadvantaged individuals. We would need data to show that discrimination exists, just like with any typical Disparity Study. I am not sure if we captured the data to see how many firms that would identify as gay, lesbian, or transgender. To show disparity, we would need to have solid data.

Committee Member, Tina Cannon adds that she will provide the LCC and other city entities and other states that have approved this method and all the data that follows to assist City Council with deciding on this matter.

Committee Chair, Eliza May asks if we have local data?

Committee Vice-Chair Reginald Worlds adds that we may have to include data from multiple sources.

Committee Member, Tina Cannon asks what would the Committee do with the local data and what data is it? What data points are helpful?

Committee Chair, Eliza May responds that it is for measuring the data. She states that while it is good to have data from around the country to support this topic, it is necessary to have local data.

Committee Member, Barbra Boeta asks if the question was included in the Disparity Study?

SMBR Interim Director, Edward Campos responds that the Disparity Study is not looking at this particular question. Also, not sure what data is being collected. He would have to find out what Purchasing is specifically collecting, if anything, for those areas, but typically we capture things like number of contracts, dollar amount per contract overall, participation, etc.

Committee Member, Daniel Berner is concerned that this matter can be legally challenged because we do not have the data. It is critical to include this in the disparity study if not this one but further down the line.

Committee Member, Tina Cannon comments that because there is not any city data being collected on this shows the disparity. Because it is not part of the discussion, the lexicon and procurement, it identifies an enormous gap.

Committee Member, Lena Banks adds that the LGBTE community has been a forgotten population. Let us do whatever we can to supplement or add to what we are already doing. If we do not do anything about it now, will it be included in the next Disparity Study which is a several years off.

SMBR Interim Director, Edward Campos responds that he was not aware that this was an area that needed to be included in the Disparity Study. It was not included in past studies. We are almost at the end of the study. Not sure how this item can be added to the study, how much it would delay the study, and of the initial cost to include it but he will inquire. Edward Campos reiterates that when the Disparity Study was conducted, it has been conducted in support of the local program as it is established. That is the reason that a Disparity Study is narrow, and it's scope of work was tailored to this purpose. When we had the scope of workout for public comment, we never received any comment about including groups outside of those presumed groups. We went to different committees and the various Quality of Life Commissions (including the LGBTQ Quality of Life commission) with our scope and asked if anything need to be added. There was never a comment or request to include LGBTQ firms in the scope of work.

Committee Vice-Chair, Reginald Worlds agreed with Edward Campos. The Board and the community all concurred as a whole. It is really tough to go back and change the focus at this point in time.

Committee Member, Usha Boddapu asks if in the current MBE/WBE certifications, if there is a checkbox for "transgender".

SMBR Interim Director, Edward Campos stated that a checkbox for this information does not exist. He suggests that instead of having that checkbox at the certification level, it is probably more comprehensive to see if we can work with our Financial Services Department to have it added at the vendor registration level (using the Austin Finance Online portal).

Committee Member, Daniel Berner re-emphasizes that the absence of this item from the Disparity Study for the LGBTQ community could potentially doom this effort from a legal standpoint. Wants to do whatever possible within the bounds of the budget to include it in the Disparity Study.

Committee Member, Tina Cannon asks if it would be helpful to disburse information on the background and sister cities or similar instances where this has passed and the processes they went through? Would the Committee be interested in a speaker from the NGCC certifying body about what has happened across the country?

Committee Vice-Chair, Eliza May says it would be a good idea just run it past City staff to make sure the proper channels are followed regarding public meetings.

- c. Director's Updates and Announcements with discussion and possible action
 - There are no updates.

3. OLD BUSINESS

For discussion and possible action on recommendations to City Council (City Code § 2-1-163(B)) regarding the following:

- a. Update on the Disparity Study with discussion and appropriate action
 - SMBR Compliance Officer, Tamela Saldaña gave the update which addressed Committee Chair, Eliza May's request for an outline of the next steps.
 - We have already gone through an extensive study period. The consultant is analyzing the qualitative and quantitative data we submitted back in September 2020. This part of the process takes an extensive amount of time. It is scheduled to be returned to us in May 2021.
 - We will go through an extensive briefing session with all the internal and external stakeholders. We identified those specifically because these are the same groups that we went out to in the collection of the qualitative and quantitative data to include this Advisory Committee. If we remain on track, in June and July we will go through an extensive outreach period where we will go and provide briefings on the study results. The plan is to submit this to Council in August 2021. The plan is to begin working with the inclusive procurement working group in August and September 2021.
 - SMBR Interim Director, Edward Campos adds that in January 2019, they touched on all the Quality of Life commissions that are supported by Council-appointed members. We briefed them on the scope of work. We also told them we would return when we had findings. June we will be presenting the Disparity Study results.
- b. Monthly update on the 1) Council Awards; 2) Third-Party Project; 3) Request for Change (RFC); and 4) Certification Roll.
 - SMBR Compliance Officer, Tamela Saldaña gave the updates on the Council Awards, Third Party Project, and the Request for Change reports. These reports are posted on the Advisory Committee website.
 - Tamela gives an update on the Q2 soccer stadium on the Third-Party Project report.

Discussion:

Committee Member, Barbra Boeta comments that regarding participation and the City spending money for the soccer stadium. The City allows use of the land for both the stadium and for the green water block, it is hard to fathom the low minority participation percentages especially since this is going to be something Austin is proud of.

SMBR Interim Director, Edward understands the alarm regarding the lack of minority participation. SMBR is surveying firms on the reasons why firms are not bidding on these contracts?

Committee Member, Tina Cannon comments that Personal Net Worth plays a factor when you are looking at these type of contract amounts. It takes major assets to be able to gather major pieces of equipment that all factor into that personal net worth calculation.

- Tamela gives an update on the Request for Change Report.
- SMBR Certification Division Manager, Elton Price gave the updates on the Certification Roll Report. This report is posted on the Advisory Committee website.

Discussion:

Committee Member, Usha Boddapu asks what is the process SMBR is following for the site visit compliance as part of the certification?

Certification Division Manager, Elton Price responds that SMBR conducts the virtual site visits.

Committee Chair, Eliza May asks if there is a checklist or form when conducting site audits?

SMBR Interim Director, Edward Campos responds that we do have a checklist for site audits. We ask specific questions related to the scope of work that those firms are trying to get certified in. For construction, we look at what sort of equipment that they have, request copies of invoices for prior work performed. We make sure that that the that the work that they're trying to get certified under they performed in the past. There is a form as well as questions that we can provide to you at the next meeting.

Committee Member, Usha Boddapu provided feedback on her experience with site visits while applying for federal certification.

4. FUTURE AGENDA ITEMS

- Committee Chair, Eliza May requests the following for the future agenda:

Old Business

- Add item 2a (Personal Net Worth) and invite Salvador Chavarria and Frank Fuentes back to participate in these discussions at the next meeting.
 - Staff to make a presentation on the timeline of a personal net worth issue, Calculating the personal net worth for a particular individual
 - How net worth equates to the increase in cost of living in Austin

- What sort of change would you contemplate?
- What do you think could be useful/helpful?
- Research the payment process for construction and how long are the delays?
- Add item 2b (LGBTE inclusion) so that Committee Member, Tina Cannon can follow up on any data sets. Any items she wants distributed should be sent to City staff for distribution at the next meeting.
 - What are the options for making this happen?
 - What are the options if this item can't be included in the Disparity Study?

New Business

- No items identified.

ADJOURN

Committee Chair, Eliza May adjourned meeting at 8:23pm.